

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JERRY NEWTON CASTLE, JR.

ID # 1371891,

Petitioner,

VS.

**RICK THALER, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division,
Respondent.**

No. 3:11-CV-0380-M (BH)

Referred to U.S. Magistrate Judge

ORDER ACCEPTING FINDINGS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

After reviewing the objections to the Findings, Conclusions, and Recommendation of the United States Magistrate Judge recommending that petitioner's motion to stay and abate his federal petition be denied, and conducting a *de novo* review of those parts of the Findings and Conclusions to which objections have been made, I decline to adopt the Magistrate Judge's factual finding that petitioner did not attempt to raise his unexhausted claim in his state writ. However, I am of the opinion that the remainder of the Findings and Conclusions of the Magistrate Judge are correct and they are accepted as the Findings and Conclusions of the Court. Because petitioner has not shown that the unexhausted claim he seeks to exhaust in state court is potentially meritorious, as required under *Rhines v. Weber*, 544 U.S. 269, 278 (2005), petitioner's motion to stay and abate his case (doc. 23) is **DENIED**.

SIGNED this 3rd day of October, 2011.

Barbara M G Lynn
BARBARA M. G. LYNN

BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS